Chapter Bkg 3

PARITY WITH NATIONAL BANKS

Bkg 3.01 Bank-owned banks, lending and depository authority. A bank-owned bank organized under s. 221.57, Stats., may provide banking and bank related services to:

(1) Subsidiaries or organizations owned by depository institutions,

(2) Directors, officers or employes of depository institutions, including any subsidiary or organization owned by a depository institution, and,

(3) Depository institution trade associations.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Bkg 3.02 Bank-owned banks, limitations on lending and depository authority. The total loans made and deposits received of a bank-owned bank pursuant to Bkg 3.01 may not exceed the following:

(1) The total loans made to all entities and individuals described in Bkg 3.01 may not exceed 10% of the total assets of the bank.

(2) The total deposits received from all individuals and entities described in Bkg 3.01 may not exceed 10% of the total liabilities of the bank.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Bkg 3.03 Use of data processing equipment and furnishing of data processing service. As part of its banking business and incidental thereto, a bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data. In addition, incidental to its banking business, a bank may:

(1) Market a by-product (such as program or output) of a data processing activity described in this rule; and

(2) Market excess time on its data processing equipment so long as the only involvement by the bank is furnishing the facility and necessary operating personnel.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Bkg 3.04 Operations through subsidiaries. (1) GENERAL RULE. With the prior approval of the commissioner, a bank may engage in activities which are a part of the business of banking or incidental to the business of banking by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80% of the voting stock of the subsidiary must be owned by the parent bank.

(2) ACTIVITIES PERMITTED. An operating subsidiary may perform any business function which is a part of the business of banking or incidental to the business of banking. For example, an operating subsidiary may,

among other things, issue credit cards, service mortgages, lease property or operate a credit bureau.

(3) TRANSACTIONS WITH PARENT BANK. Transactions between the parent bank and the operating subsidiaries are subject to the limitations contained in s. 221.29, Stats., unless the subsidiary engages solely in furnishing services to or in performing services for a parent bank.

(4) APPLICABILITY OF BANKING LAWS. All provisions of the banking laws and rules applicable to the operations of the parent bank shall be equally applicable to the operations of its operating subsidiaries.

(5) CONSOLIDATION OF FIGURES. Unless otherwise provided by banking laws or regulations, pertinent book figures of the parent bank and its operating subsidiaries, except agricultural credit corporations, shall be consolidated for the purpose of applying applicable statutory limitations, including but not limited to ss. 221.14, 221.29, 221.33 or 221.38, Stats.

(6) EXAMINATION AND SUPERVISION. Each operating subsidiary shall be subject to examination and supervision by the commissioner in the same manner and to the same extent as the parent bank. If, upon examination, the commissioner ascertains that the subsidiary is created or operated in violation of the banking law or regulation or that the manner of operation is detrimental to the business of the parent bank and its depositors, the commissioner may order the bank to dispose of all or part of the subsidiary upon such terms as the commissioner may deem proper.

(7) REPORT OF DISPOSITION OF OPERATING SUBSIDIARY. Prior to disposition of an operating subsidiary, the parent bank shall inform the commissioner by letter of the terms of the transaction.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

Bkg 3.05 Leasing of personal property. (1) DEFINITIONS. In this section:

(a) "Full-payout lease" means a lease from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:

1. Rentals;

2. Estimated tax benefits; and

3. The estimated residual value of the property at the expiration of the initial term of the lease, provided any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subsection does not exceed 25% of the orginal cost of the property to the lessor.

(b) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for any of the following:

1. The servicing, repair or maintenance of the leased property during the lease term;

2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this rule;

3. The loan of replacement or substitute property while the leased property is being serviced;

4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

5. The renewal of any license or registration for the property unless such action by the bank is clearly necessary to protect its interest as an owner or financier of the property.

(2) AUTHORITY TO LEASE PERSONAL PROPERTY. Subject to the limitations in this rule and provided the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may;

(a) Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the bank; or

(b) Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(3) RECOVERY IN THE EVENT OF DEFAULT. If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may,

(a) As the owner and lessor under a net, full-payout, lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease, or

(b) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(4) APPLICATION OF OTHER LAWS. Nothing in this rule shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 et. seq. or the Wisconsin Consumer Act, ch. 421 to 427, Stats.

(5) LIMITATION ON LEASING CONCENTRATIONS. Leases permissible under this rule are subject to the limitations on obligations under s. 221.29, Stats.

Note: In operating under this rule it is anticipated that banks will estimate the total cost of financing the property over the term of the lease to reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of each lessor and lessee involved in the transaction and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost financing if the bank's yield from the lease is equivalent to what the yield would be on a similar loan. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

History: Cr. Register, July, 1983, No. 331, eff. 8-1-83.